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September 11, 2006

**AGENDA ITEM 7c**

**TO: MEMBERS OF THE INVESTMENT COMMITTEE**

- I. SUBJECT:** Update on Investments in Companies Doing Business in Sudan
- II. PROGRAM:** Global Equity
- III. RECOMMENDATION:** Information
- IV. ANALYSIS:**

**Executive Summary**

Since June 19, 2006 and following extensive internal analysis that incorporated information from various external sources, staff has compiled what it believes to be a comprehensive list of portfolio companies identified as doing business in Sudan. The table in Attachment 1 contains this list as well as the results to date of staff's engagement with each one.

CalPERS has contracted with ISS for access to ISS' database of companies identified as doing business in Sudan. Information pertaining to CalPERS' portfolio companies has been extracted and is supplementing staff's internal research.

CalPERS' commitment to its constructive engagement plan remains steadfast as well as the on-going implementation of it including the next steps outlined on page 4.

**Background**

On June 19, 2006, the Investment Committee received its last update pertaining to investments in companies doing business in Sudan. That included a summary

of staff's efforts to identify and engage those companies as well as the continued implementation of CalPERS' constructive engagement plan.

This agenda item contains an update on actions taken since June 19, 2006.

### **Progress Update**

#### **CalPERS Constructive Engagement Plan**

Since the most recent update to the Investment Committee in June 2006 and following extensive internal analysis which also incorporated information from various external sources, staff has compiled what it believes to be a comprehensive list of portfolio companies that have been identified as doing business in Sudan. Doing business in Sudan is defined as companies maintaining, selling, or leasing equipment, facilities, personnel, or any other apparatus of business or commerce in Sudan, including the ownership or possession of real or personal property located in Sudan. However, there is a process to monitor CalPERS' portfolio companies in an effort to identify additional companies that have active business operations in Sudan.

The table in Attachment 1 contains the list and it includes both the companies previously reported to the Investment Committee as well as additional companies identified since June 2006. Each company has been placed under a column in the table that represents staff's findings to date via their engagement with the companies. The companies with "Active Business Operations in Sudan" are in various stages of engagement, including but not limited to directing them to the Business Leaders Initiative on Human Rights (BLIHR), CDA Collaborative Learning Projects (CDA), and the United Nations Global Compact to assist the companies' assessment and report on the impact of their operations in Sudan.

With regard to the companies with active "Non-Oil Related Business Activities in Sudan," Ingersoll Rand is the only domestic company that reported sales in Sudan but did not indicate whether the sales were authorized by the U.S. government. According to the company, it had sales of approximately \$100,000 in Sudan in 2005. Therefore, a follow-up letter has been sent requesting confirmation that Ingersoll Rand had proper authorization by the U.S. government prior to completing the sales.

CalPERS' Initial Letter of Inquiry has been sent to each company listed under the "Currently Unknown if there are Active Business Operations in Sudan" column. The response deadline varies for each company and is dependent upon the date the letter was sent. However, over half of the companies were sent a second request letter on August 14, 2006 due to their lack of response to the Initial Letter of Inquiry. As responses to CalPERS' Letter of Inquiry are received from the companies, they will be reviewed to determine whether or not the company has

active business operations in Sudan and if so whether it's oil-related, non-oil related, authorized by the U.S. government, or pertains to relief, health, journalism or religion. Based on the results of the analysis, the appropriate next step for engagement will be identified.

Companies that have communicated that they are in the process of terminating their active business operations in Sudan will be monitored until such time that the companies can confirm that their operations have been terminated.

#### Institutional Shareholder Services, Inc. (ISS)

As reported to the Investment Committee on June 19, 2006, CalPERS contracted with ISS to gain access to ISS' database of companies identified as doing business in Sudan. The information contained therein supplements internal analysis and efforts to identify CalPERS' portfolio companies with active business operations in Sudan. The companies in ISS' database have been checked against CalPERS' portfolio holdings to identify current holdings that require due diligence. As new companies are added to the database, they will be checked against CalPERS' portfolio holdings to determine if further due diligence is required.

#### Office of Foreign Asset Control (OFAC)

Staff continues to monitor the U.S. Department of the Treasury's OFAC for companies against whom OFAC has levied penalties for violating federal sanction programs specific to activities in Sudan. Since the last update to the Investment Committee in June 2006, OFAC levied a penalty of \$2,750 against Jarden Zinc Products, Inc. (a subsidiary of Jarden Corporation) for its violation of the federal sanction program for Sudan. Jarden responded to CalPERS' request for additional information on the penalty with a description of the circumstances surrounding the violation as well as the measures Jarden has taken to prevent any future business activities from being performed in Sudan other than what is permitted by the U.S. Government.

Upon receiving an unsolicited order for zinc photo-engraving plates from the Sudan Mint and because of the company's limited international experience, Jarden Zinc relied on its freight forwarder to confirm compliance with export laws and regulations. Initially, the freight forwarder advised that the proposed transaction did not violate OFAC regulations leading Jarden Zinc to ship the plates in December 2001. In late summer 2002, the freight forwarder notified the company that the shipment did in fact violate OFAC regulations. Jarden Zinc voluntarily disclosed the transaction to OFAC. OFAC's original penalty of \$11,000 was reduced to \$2,750 after OFAC considered the mitigating factors surrounding the transaction.

Jarden Zinc has taken steps to ensure compliance with OFAC and other export regulations, including adopting and publishing an Export Policy Statement, implementing a computer system to check for compliance issues, and designating an Export Compliance Supervisor. In addition, Jarden Corporation now maintains a corporate legal staff, including lawyers with specific experience in OFAC regulations and anti-boycott issues, that provides legal support to Jarden Zinc.

#### Identification of Third Party Consultants

There are continued efforts to identify new and reliable third party consultants to assist CalPERS in the identification and engagement of companies identified as doing business in Sudan. F&C Asset Management (F&C) is one such entity that staff is engaging in an on-going dialogue to determine if the services provided by F&C would be both meaningful and beneficial to CalPERS' constructive engagement plan.

#### State Legislation

The California State Legislature continues to hear AB 2941, "Public Retirement Systems: Investments: Sudan." Amendments have been made to the legislation which CalPERS continues to monitor.

#### Sudan Coalition

CalPERS continues to collaborate with the Sudan Coalition. The Coalition is currently attempting to arrange a meeting with Schlumberger, which has been identified as having active oil-related business operations in Sudan. Staff also recently met with the San Francisco Employees' Retirement System (SFERS) to discuss, among other topics, Sudan. Upon hearing of the Coalition's efforts, SFERS joined the group and intends to participate in the meeting with Schlumberger.

#### Next Steps

CalPERS' commitment to its constructive engagement plan remains unwavering. Next steps will include the following:

- Follow-up with those companies who have yet to respond to CalPERS' Letter of Inquiry or whose responses were unclear as to whether or not they have active business operations in Sudan.
- Continue to actively engage portfolio companies that are reported as having active business operations in Sudan, including:

- Follow-up with Ingersoll Rand to determine if the company's sales in Sudan in 2005 were authorized by the U.S. Government.
- Request that companies with active business operations in Sudan work with CDA Collaborative Learning Projects, the Business Leaders Initiative on Human Rights, and United Nations Global Compact to assess and report on the impact of their company's operations in Sudan.
- Engage companies against which OFAC has levied penalties for violating federal sanction programs specific to activities in Sudan.
- Continue to seek new and reliable sources in addition to ISS to identify and engage companies with active business operations in Sudan.
- Continue to work with the Sudan Coalition and collaborate where appropriate, including:
  - Support the Coalition's efforts to arrange a meeting with Schlumberger to discuss the company's oil-related business operations in Sudan.

#### **V. STRATEGIC PLAN:**

This item is a product of the 2005-2006 Global Equity Annual Plan.

#### **VI. RESULTS/COSTS:**

Over the course of last year, the primary cost to the Fund for this initiative has been significant staff time and travel costs associated with engagement activities.

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